

(26,301)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 834.

ROBERT L. COLEMAN, AS ADMINISTRATOR, AND LOUISE  
L. COLEMAN, AS ADMINISTRATRIX, OF THE ESTATE  
OF WALTER H. COLEMAN, DECEASED, APPELLANTS,

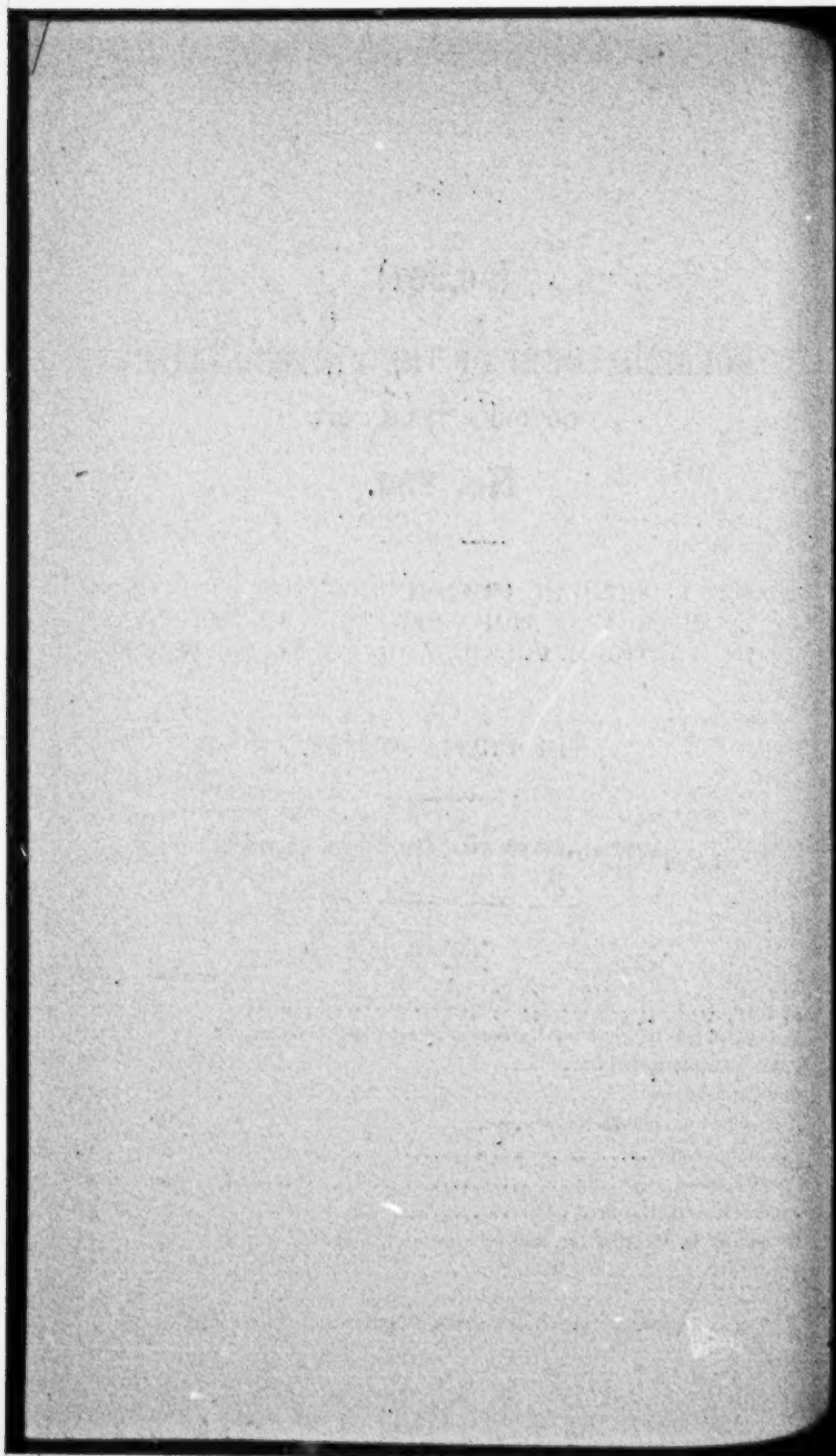
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

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1 I. *Petition. Filed March 9, 1916.*

In the Court of Claims of the United States.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,  
as Administratrix, of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

*Petition.*To the Honorable the Chief Justice and the Judges of the Court of  
Claims:Petitioners, Robert L. Coleman and Louise L. Coleman, as ad-  
ministrator and administratrix of the estate of Walter H. Coleman,  
deceased, respectfully represent:

## I.

That on June 13, 1898, the President of the United States approved  
an act entitled "An act to provide ways and means to meet war  
expenditures and for other purposes" (30 Stat., 448, 464-5),  
2 by section 29 of which legacies and distributive shares arising  
from personal property become subject to a tax. Portions of  
said section 29 material to this case are as follows:

"Section 29. That any person or persons having in charge or trust,  
as administrators, executors, or trustees, any legacies or distributive  
shares arising from personal property, where the whole amount of  
such personal property as aforesaid which shall exceed the sum of  
ten thousand dollars in actual value, passing, after the passage of this  
Act, from any person possessed of such property, either by will or by  
the intestate laws of any State or Territory, or any personal property  
or interest therein, transferred by deed, grant, bargain, sale, or gift,  
made or intended to take effect in possession or enjoyment after the  
death of the grantor or bargainer, to any person or persons, or to  
any body or bodies, politic or corporate, in trust or otherwise, shall  
be, and hereby are, made subject to a duty or tax, to be paid to the  
United States as follows—that is to say:

"Where the whole amount of said personal property shall exceed  
in value ten thousand and shall not exceed in value the sum of  
twenty-five thousand dollars the tax shall be:

"First. Where the person or persons entitled to any beneficial  
interest in such property shall be the lineal issue or lineal ancestor,  
brother, or sister to the person who died possessed of such property,  
as aforesaid, at the rate of seventy-five cents for each and every hun-  
dred dollars of the clear value of such interest in such property.

"\* \* \* where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; \* \* \*

## II.

That on June 27, 1902, the President of the United States approved an act entitled "An act to provide for refunding taxes paid upon legacies and bequests for uses of a religious, charitable, or educational character, for the encouragement of art, and so forth, under the act of June thirteenth, eighteen hundred and ninety-eight, and for other purposes" (32 Stat., 406), of which Section 3 is material in this case and reads as follows:

"That in all cases where an executor, administrator, or trustee shall have paid, or shall hereafter pay, any tax upon any legacy or distributive share of personal property under the provisions of the Act approved June thirteenth, eighteen hundred and ninety-eight, entitled 'An Act to provide ways and means to meet war expenditures, and for other purposes,' and amendments thereof, the Secretary of the Treasury be, and he is hereby, authorized and directed to refund, out of any money in the Treasury not otherwise appropriated, upon proper application being made to the Commissioner of Internal Revenue, under such rules and regulations as may be prescribed, so much of said tax as may have been collected on contingent beneficial interests which shall not have become vested prior to July first, nineteen hundred and two. And no tax shall hereafter be assessed or imposed under said Act approved June thirteenth, eighteen hundred and ninety-eight, upon or in respect of any contingent beneficial interest which shall not become absolutely vested in possession or enjoyment prior to said July first, nineteen hundred and two."

## III.

That on April 12, 1902, the President of the United States approved an act entitled "An act to repeal war revenue taxation, and for other purposes" (32 Stat., 96), by which said Section 29 of the said act of June 13, 1898, was repealed, said repeal to take effect on July 1, 1902. Portions of said act of April 12, 1902, material to this case are as follows:

"Section 7. That section \* \* \* twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and all amendments \* \* \* be, and the same are hereby, repealed.

4 "Section 8. That all taxes or duties imposed by section twenty-nine of the Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, prior to the taking effect of this Act, shall be subject, as to lien, charge, collection, and otherwise, to the provisions of section thirty of said Act of June thirteenth, eighteen hundred and ninety-eight, and amendments thereof, which are hereby continued in force, as follows: \* \* \*

\* \* \* \* \*

"Section 11. That this Act, except as otherwise specifically provided in the preceding section, shall take effect July first, nineteen hundred and two."

## IV.

That on July 27, 1912, the President of the United States approved an act entitled "An act extending the time for the repayment of certain war-revenue taxes erroneously collected" (37 Stat., 240), the whole of which is as follows:

"That all claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected under the provisions of section twenty-nine of the act of Congress approved June thirteenth, eighteen hundred and ninety-eight, known as the war-revenue tax, or of any sums alleged to have been excessive, or in any manner wrongfully collected under the provisions of said Act may be presented to the Commissioner of Internal Revenue on or before the first day of January, nineteen hundred and fourteen, and not thereafter.

"Sec. 2. That the Secretary of the Treasury is hereby authorized and directed to pay, out of any moneys of the United States not otherwise appropriated, to such claimants as have presented or shall hereafter so present their claims, and shall establish such erroneous or illegal assessment and collection, any sums paid by them or on their account or in their interest to the United States under the provisions of the Act aforesaid."

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## V.

That on June 1, 1902, Walter H. Coleman, a citizen of the United States and of the State of New York, and a resident of the Borough of Brooklyn, in the City of New York and in the County of Kings in said State, departed this life, leaving no last will and testament, and that the Petitioners were duly appointed administrator and administratrix of the estate of the said decedent, by letters of administration issued on June 9, 1902, by the Surrogate's Court of Kings County in said State, a court of competent jurisdiction, and qualified as such administrator and administratrix, and proceeded to act, and now act, in that capacity; all of which will more fully appear by reference to a certified copy of the letters of administration, attached hereto, which is prayed to be read and considered as a part of this Petition.

## VI.

Sections 1819, 2718 (so far as material in this case), 2721, 2722, and 2723 of the Code of Civil Procedure of the State of New York, in force at the time of the decease of the said Walter H. Coleman and continuously thereafter until July 1, 1902, and for some years thereafter, are as follows:

"Section 1819. If, after the expiration of one year from the granting of letters testamentary or letters of administration, an executor



or administrator refuses, upon demand, to pay a legacy, or distributive share, the person entitled thereto may maintain such an action against him, as the case requires. But for the purpose of computing the time, within which such an action must be commenced, the cause of action is deemed to accrue, when the executor's or administrator's account is judicially settled, and not before."

6 "Section 2718. The executor or administrator at any time after the granting of his letters, may insert a notice, once in each week for six months in such newspaper or newspapers printed in the county as the surrogate directs, requiring all persons having claims against the deceased to exhibit the same, with the vouchers therefor, to him, at a place to be specified in the notice, at or before a day therein named, which must be at least six months from the day of the first publication of the notice. \* \* \* If a suit be brought on a claim which is not presented to the executor or administrator within six months from the first publication of such notice, the executor or administrator shall not be chargeable for any assets or moneys that he may have paid in satisfaction of any lawful claims, or of any legacies, or in making distribution to the next of kin before such suit was commenced."

"Section 2721. No legacy shall be paid by any executor or administrator until after the expiration of one year from the time of granting letters testamentary or of administration, unless directed by the will to be sooner paid. If directed to be sooner paid, the executor or administrator may require a bond, with two sufficient sureties, conditioned, that if debts against the deceased duly appear, and there are not assets to pay the same, and no other assets sufficient to pay other legacies, then the legatees will refund the legacy so paid, or such ratable portion thereof with the other legatees, as may be necessary for the payment of such debts, and the proportional parts of such other legacies, if there be any, and the costs and charges incurred by reason of the payment to such legatee, and that if the probate of the will, under which such legacy is paid, be revoked, or the will declared void, that such legatee will refund the whole of such legacy, with interest, to the executor or administrator entitled thereto. After the expiration of one year, the executors or administrators must discharge the specific legacies bequeathed by the will and pay the general legacies, if there be assets. If there are not sufficient assets, then an abatement of the general legacies must be made in equal proportions. Such payment shall be enforced by the surrogate in the same manner as the return of an inventory, and by a  
7 suit on the bond of such executor or administrator whenever directed by the surrogate."

"Section 2722. In either of the following cases a petition may be presented to the surrogate's court, praying for a decree, directing an executor or administrator to pay the petitioner's claim, and that he be cited to show cause why such a decree should not be made:

"1. By a creditor, for the payment of a debt, or of its just proportional part, at any time after six months have expired since letters were granted.

"2. By a person entitled to a legacy, or any other pecuniary provision under the will, or a distributive share, for the payment or

satisfaction thereof, or of its just proportional part, at any time after one year has expired since letters were granted.

"On the presentation of such a petition, the surrogate must issue a citation accordingly; and on the return thereof, he must make such a decree in the premises as justice requires. But in either of the following cases the decree must dismiss the petition without prejudice to an action or an accounting, in behalf of the petitioner:

"1. When an executor or administrator files a written answer, duly verified, setting forth facts which show that it is doubtful whether the petitioner's claim is valid and legal, and denying its validity and legality, absolutely, or on information and belief.

"2. Where it is not proved, to the satisfaction of the surrogate, that there is money or other personal property of the estate, applicable to the payment or satisfaction of the petitioner's claim and which may be so applied, without injuriously affecting the rights of others, entitled to priority or equality of payment or satisfaction."

"Section 2723. In a case specified in subdivision second of the last section, the surrogate may in his discretion, entertain the petition at any time after letters are granted, although a year has not expired. In such a case, if it appears, on the return of the citation, that a decree for payment may be made, as prescribed in the last section; and that the amount of money and the value of the other property

in the hands of the executor or administrator applicable to the payment of debts, legacies and expenses, exceed, by at least one-third, the amount of all known debts and claims against the estate, of all legacies which are entitled to priority over the petitioner's claim and of all legacies and distributive shares of the same class; and that the payment or satisfaction of the legacy, pecuniary provision or distributive share, or some part thereof, is necessary for the support or education of the petitioner; the surrogate may, in his discretion, make a decree directing payment or satisfaction accordingly, on the filing of a bond, approved by the surrogate, conditioned as prescribed by law, with respect to a bond which an executor or an administrator with the will annexed may require from a legatee, on payment or satisfaction of a legacy, before the expiration of one year from the time when letters were issued, pursuant to a direction to that effect contained in the will."

That the estate of the said Walter H. Coleman, deceased, was, and has been, and is being, administered in all respects subject to and in accordance with the aforesaid Sections.

## VII.

That a notice requiring all persons having claims against the estate of the said Walter H. Coleman, deceased, to exhibit the same to the administrator and administratrix, or one of them, in accordance with the law in that case made and provided, was first published in the Brooklyn Daily Times, a newspaper published in the Borough of Brooklyn, in the City of New York, and County of Kings, in the State of New York, on June 19, 1902, and was thereafter published once a week for six months, commencing with said

June 19, 1902; that the time within which persons having claims against said estate were permitted to file their said claims expired on December 20, 1902, and not before said date; that the amount of debts and claims against the said estate had not been determined, and could not have been determined, on or before July 1, 1902; that the rights of the next of kin and the value of their respective interests in said estate, were not determined or ascertained, and could not have been determined or ascertained, on or before July 1, 1902.

### VIII.

That the said Walter H. Coleman, deceased, left him surviving, as his only next of kin, his daughter, Louise L. Coleman, one of the Petitioners, and his sons, Robert L. Coleman and Walter Coleman, the said Robert L. Coleman being one of Petitioners; that on June 12, 1902 the aggregate sum of Fifteen Hundred Dollars (\$1,500.00) was paid in equal shares of Five Hundred Dollars (\$500.00) each, out of the funds of the estate of the said decedent, to his said next of kin; that on June 25, 1902, an additional sum of Five Hundred Dollars (\$500.00), out of the funds of the said estate, was paid to the said Robert L. Coleman; that the aforesaid payments, aggregating Two Thousand Dollars (\$2,000.00) in all, were advances to said next of kin on account of their supposed interests in the estate of the said decedent; that on account of and to the extent of the advances aforesaid the Petitioners, as administrator and administratrix, became personally liable for claims against the estate in excess of the assets thereof which might be presented prior to December 20, 1902, and said next of kin were, on July 1, 1902, and thereafter, at least until the time for the presenting of claims against said estate had expired, liable to be required, in accordance with the laws of the State of New York, to refund the full amount of said advances, in order to provide funds for the payment of claims against said estate; that neither on nor before July 1, 1902, were any other or additional payments, out of the funds of the said estate, made to or for the account of, the said next of kin or any of them, nor prior to July 1, 1902, did any other or additional benefit, beyond the payments hereinbefore expressly stated, accrue out of said estate to or for the use of all or any of said next of kin; that neither on nor before July 1, 1902, was any order entered or requirement made, by any court or officer of probate or by any other court, authorizing or directing the payment of any further or additional sum to or for the benefit of the said next of kin or either of them nor did said next of kin, or either of them, claim or demand or become entitled to claim or to demand or to receive any further or additional payment or benefit out of said estate.

### IX.

That on or about May 29, 1903, the Petitioners paid to the United States Collector of Internal Revenue, for the First District of New



York, the sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), which the said Collector had previously demanded and claimed and did there and then demand and claim to be due to the United States, under the provisions of the said Act of June 13, 1898, and amendments, as a tax upon or in respect of distributive shares arising from personal property passing from the said Walter H. Coleman, deceased, to his said next of kin, and that the whole of the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), demanded, claimed and paid, as aforesaid, was duly turned over to the United States, by the said Collector of Internal Revenue in the usual course of his business as collector.

## X.

That subsequent to the payment of said Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), as aforesaid, and on or about March 17, 1914, application was  
11 duly made to the Commissioner of Internal Revenue, in accordance with the regulations made and provided by the Secretary of the Treasury and in accordance with the provisions of the Act of June 27, 1902, and in said application it was represented that the whole of said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) was due and should be paid to the Petitioners, in accordance with the provisions of the said Act of June 27, 1902; that on or about, March 24, 1914, the said application was denied; that a request for further consideration having been duly made and filed, the said request for reconsideration was, on or about November 13, 1915, refused and denied, and that the only reason assigned for said denial and refusal to make the payment applied for, as aforesaid, was stated, over the signature of the Acting Commissioner of Internal Revenue, in a letter to the attorneys for the Petitioners, said letter bearing date as of November 13, 1915, and being substantially, in words and figures, as follows:

"Referring to your request filed on the fourteenth ultimo for reconsideration of your rejected claim as attorneys for the estate of Walter H. Coleman, deceased, for the refunding of \$6,721.71, tax on legacies, you are informed that, since no claim for this tax was filed until March 17, 1914, and since no part of the tax was paid upon charitable, educational or religious bequests, the limitation imposed in the Act of July 27, 1912, operates to bar consideration of the claim and it can not, therefore, be reopened."

That the Commissioner of Internal Revenue and the Secretary of the Treasury have refused, and continue to refuse, to pay to the Petitioners the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), and that the whole of said sum is now retained and held by the United States.

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## XI.

Petitioners are advised by counsel and therefore aver:

First. That the interests of the next of kin of the said Walter H.

Coleman, deceased, in his said estate, were, on July 1, 1902, within the intendment of the Act of June 27, 1902, contingent beneficial interests which had not become absolutely vested in possession or enjoyment, and that said Act contained an appropriation out of the Treasury of the United States of the funds necessary to pay to the Petitioners the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) collected and paid as aforesaid.

Second. That the Act of June 27, 1902, and Section 3 thereof, are and continue unrepealed and in full force and effect and that the Act of June 27, 1912, does not, as alleged in the aforesaid letter bearing date as of November 13, 1915, and written over the signature of the said Acting Commissioner of Internal Revenue, place or impose any limitation upon or with respect to the said Act of June 27, 1902, or Section 3 thereof.

## XII.

Wherefore your Petitioners aver that there is justly owing to them, on account of the matters herein set forth, the sum of Six Thousand Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71), after deducting all just set-offs and demands on the part of the United States, and they further aver that they are the sole owners of the claim herein sued upon, and that no transfer or assignment of said claim or any part thereof or interest therein has ever been made; that Robert L. Coleman one of the Petitioners, is a citizen of the United States and of the State of California and a resident of the City and County of San Francisco in said State and that Louise L. Coleman, one of the Petitioners, is a citizen of the United States and of the State of New York and a resident of the City of White Plains in the County of Westchester in said State, and that they have at all times borne true allegiance to the Government of the United States and have not in any way voluntarily aided, abetted or given encouragement to a rebellion against the United States and that they believe the averments in this petition to be true.

The premises considered, petitioners pray:

### Prayer.

1. That this Honorable Court will render judgment against the United States for the said sum of Six Thousand and Seven Hundred and Twenty-one and 71/100 Dollars (\$6,721.71) in favor of the Petitioners.

2. That Petitioners may have such other and further relief as the nature of the case may require and to this Honorable Court may seem meet and proper.

MORRIS F. FREY,  
*Attorney for Petitioners.*

## DISTRICT OF COLUMBIA, ss:

Personally appeared before me, a notary public in and for the District of Columbia, Morris F. Frey, who being duly sworn according to law, deposes and says that he has been duly authorized to make oath in this cause, by power of attorney heretofore filed herein, that he has read and understands the foregoing Petition, and that the matters and facts therein set forth are true in substance and in fact, as he is informed and believes.

MORRIS F. FREY.

Subscribed and sworn to before me this 8th day of March, A. D. 1916.

[SEAL.]

HARRIETT L. HART,  
Notary Public.

14 The People of the State of New York to all to whom these Presents shall come or may concern, send Greeting:

Know ye, that we, having inspected the Records of our Surrogate's Court in and for the County of Kings, do find that on the 9th day of June in the year one thousand nine hundred and two, by said court, letters of administration of the goods, chattels, and credits of Walter H. Coleman late of the County of Kings, deceased, were granted and committed unto Louise L. Coleman and Robert L. Coleman and that it does not appear by said records that said letters have been revoked.

In testimony whereof, we have caused the seal of the Surrogate's Court of the County of Kings to be hereunto affixed.

Witness Hon. James C. Church, Surrogate of our said County of Kings, at the County of Kings, the 12th day of January in the year of our Lord one thousand nine hundred and three.

[SEAL.]

WILLIAM P. PICKETT,  
Clerk of the Surrogate's Court.

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II. *General Traverse.*

Court of Claims.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,  
as Administratrix of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

III. *Argument and Submission of Case.*

On January 9, 1918, this case was argued by Mr. Harry T. Newcomb, for the claimants, and by Mr. Charles H. Bradley, for the defendants, and the case was submitted.

IV. *Findings of Fact and Conclusion of Law.*

Filed January 14, 1918.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

## Findings of Fact.

## I.

Claimants are citizens of the United States; Robert L. Coleman, one of the claimants, is a citizen of the State of California and a resident of the City and County of San Francisco in said State, and Louise L. Coleman, one of the claimants, is a citizen of the State of New York and a resident of the City of White Plains in the County of Westchester in said State.

## II.

One June 1, 1902, Walter H. Coleman, a citizen of the United States and of the State of New York and a resident of the Borough of Brooklyn in the City of New York and of the County of Kings in said State, departed this life. Said Walter H. Coleman died intestate, leaving him surviving, as his sole next of kin, his daughter Louise L. Coleman, one of the claimants, and his sons  
17 Robert L. Coleman and Walter Coleman, said Robert L. Coleman being one of the claimants, all of whom are still living.

By proceedings duly had in the Surrogate's Court of said Kings County, said court having full, complete, and exclusive jurisdiction over the estate of the said decedent, letters of administration upon said estate were thereafter, to wit, on June 9, 1902, duly and lawfully issued to claimants, who duly qualified as administrator and administratrix, and said claimants are still administrator and administratrix of said estate. Upon qualifying as said administrator and administratrix, as aforesaid, claimants came into the actual and exclusive possession of the personal property of said estate and had the same in their possession, except as hereinafter noted, until a date subsequent to July 1, 1902. On June 12, 1902, said administrator and administratrix advanced to each of said next of kin the sum of \$500.00 and on June 25, 1902, they advanced to said Robert L. Coleman the further sum of \$500.00.

## III.

Under and by virtue of the laws of the State of New York, in force at the time of the death of said decedent, said Louise L. Coleman, Robert L. Coleman and Walter Coleman, daughter and sons of the said decedent, were each entitled to receive one-third of the net personal estate of said decedent, after the payment of all debts and charges for which the estate of said decedent might be legally liable.

## IV.

On July 1, 1902, the debts of the said decedent had not been ascertained or paid, the expenses of administration had not been ascertained, and the time allowed by law for the presentation of claims against said estate had not expired.

## V.

On May 29, 1903, the United States Collector of Internal Revenue for the First District of New York, acting on behalf of the United States and assuming to act under the provisions of an Act of Congress, approved June 13, 1898, entitled "An act to provide ways and means to meet War expenditures and for other purposes" (30 Stat. 448), and amendments thereof, collected from the plaintiffs, as administrator and administratrix, as aforesaid, the sum of \$6,721.71 as a tax under said Act upon the interest of said next of kin in said personal estate. Said sum of \$6,721.71 was paid by claimants to said Collector without protest and was by him paid into the Treasury of the United States in the ordinary course of business.

## VI.

On March 17, 1914, the plaintiff, Louise L. Coleman, filed with the Collector of Internal Revenue of the First District of New York the following claim:

"STATE OF NEW YORK,  
*County of Westchester, ss:*

Louise L. Coleman, of the State and County aforesaid, being duly sworn according to law, deposes and says that she is administratrix of the estate of the late Walter H. Coleman, of Kings County, New York; that the said Walter H. Coleman died on the first day of June, A. D. 1902; that on or about the twenty-ninth day of May, A. D. 1903, this deponent paid to the Collector of Internal Revenue for the First District (Brooklyn) of New York, a tax of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71) on distributive shares of the said estate; that this deponent verily believes that the said sum of Six Thousand Seven Hundred Twenty-



one and 71/100 Dollars (\$6,721.71) should be refunded for the following reasons:

That the sum herein claimed was erroneously and illegally collected and contrary to the provisions of the War Revenue Act of June 13, 1898, and amendments, and that the said sum should be refunded by virtue of the Act of June 27, 1902 (32 Stat. 406) and the Act of July 27, 1912 (37 Stat. 240).

And this deponent now claims that by reason of the payment of the said — of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71), she is justly entitled to have the said sum of Six Thousand Seven Hundred Twenty-One and 71/100 Dollars (\$6,721.71) refunded, and she now asks and demands the same. And this deponent further says that she has not heretofore presented any claim for the above amount or any part thereof.

LOUISE L. COLEMAN.

Sworn to and subscribed before me this 27th day of February, A. D. 1914.

VERVIE P. SUTHERLAND,  
*American Consular Agent, Nueva  
Gerona, Isle of Pines, Cuba."*

This claim with the endorsement thereon of the date of its receipt, together with the usual affidavit of the Deputy Collector to the effect that the statements therein contained were true, and together  
20 with the certificate of the Collector that the statements therein as to the payment of the tax were true and that no claim for refunding thereon had been theretofore presented, and that no portion of the amount claimed had been paid on a compromise or abated as uncollectible or erroneous, was forwarded to the office of the Commissioner of Internal Revenue. The Chief of the Claims Division recommended its rejection March 24, 1914 and on that date it was examined and the rejection approved by the Committee on Claims of the Bureau of Internal Revenue.

On October 15, 1915, Messrs. Newcomb and Frey, as attorneys for the plaintiffs herein, requested in writing of the Commissioner of Internal Revenue that said claim be reopened and allowed. On November 13, 1915 the Acting Commissioner of Internal Revenue notified Messrs. Newcomb and Frey that "Since no claim for the tax was filed until March 17, 1914, and since no part of the tax was paid upon charitable, educational or religious bequests, the limitation imposed in the act of July 27, 1912, operates to bar consideration of the claim and it can not, therefore, be reopened."

#### *Conclusion of Law.*

Upon the facts found the court concludes, as a matter of law, that no claim for the refund of the tax in question was filed with the Commissioner of Internal Revenue within the time required by law and that the petition ought to be, and it is, dismissed.

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*V. Judgment of the Court.*

At a Court of Claims held in the City of Washington on the Fourteenth day of January, A. D., 1918, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge, and decree that Robert L. Coleman, administrator, and Louise L. Coleman, administratrix of the estate of Walter H. Coleman, deceased, as aforesaid, shall not have and recover any sum in this action of and from the defendants, the United States; and that the petition be and it hereby is dismissed.

By THE COURT.

*VI. Claimants' Application for, and Allowance of, Appeal.*

Come now the claimants, by their attorney-, and pray an appeal to the Supreme Court of the United States from the judgment entered herein on the fourteenth day of January, nineteen hundred and eighteen, dismissing claimants' petition.

NEWCOMB & FREY,  
By H. T. NEWCOMB,  
*Attorneys for Claimants.*

Filed Jan. 23, 1918.

Ordered: That the above appeal be allowed as prayed for.  
January 23, 1918.

By THE COURT.

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Court of Claims.

No. 33208.

ROBERT L. COLEMAN, as Administrator, and LOUISE L. COLEMAN,  
as Administratrix, of the Estate of Walter H. Coleman, Deceased,

VS.

THE UNITED STATES.

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact and conclusion of law, filed by the Court; of the judgment of the Court; of the application of the claimants for, and the allowance of, an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this January 24th, A. D. 1918.

[Seal Court of Claims.]

SAML A. PUTMAN,  
*Chief Clerk Court of Claims.*

Endorsed on cover: File No. 26301. Court of Claims. Term No. 834. Robert L. Coleman, as administrator, and Louise L. Coleman, as administratrix, of the estate of Walter H. Coleman, deceased, appellants, vs. The United States. Filed January 28th, 1918. File No. 26301.